

(2000) 07 SC CK 0103

In the Supreme Court Of India

Case No : Civil Appeal No. 972 of 1981

Jagdishchandra Girjashanker

APPELLANT

Vs

Mohanbhai Hathibhai (Dead) through Lrs.

RESPONDENT

Date of Decision : 26-07-2000

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 29, 32G, 32PP

Citation : (2000) 9 JT 565 : (2002) 10 SCC 540

Hon'ble Judges : Y. K. Sabharwal, J;S. S. M. Quadri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The dispute, in this appeal, arises under the Bombay Tenancy and Agricultural Lands Act, 1948 (for short, "the Bombay Tenancy Act") which is also applicable to Gujarat State. The appellant is the landlord of agricultural land, bearing Survey Nos. 806/1, 802/2, 811, 813, 814 admeasuring 27 Gunthas, 24 Gunthas, 1 Acre 2 Gunthas, 29 Gunthas and 33 Gunthas in Village Kanisa, Gujarat, (for short, "the land") of which one Hathibhai was admittedly the tenant. The tenant was cultivating the land as on 1.4.1957 so u/s 326 of the Bombay Tenancy Act he became a deemed purchaser. It appears that on 16.7.1961 an order was passed by the Mamlatdar declaring the deemed purchase of the land ineffective. However, the said Hathibhai remained in possession of the land till his death on 24.9.1962. One of his sons, Chhaganbhai, it is stated, handed over possession of the land to the appellant on August 29, 1963. Thereafter, another son of the said tenant, Mohanbhai Hathibhai filed an application u/s 32PP of the Bombay Tenancy Act, claiming possession of the land in question on the ground that the possession of the land was taken by the appellant otherwise than u/s 29 of the Bombay Tenancy Act. That application was dismissed by the Mamlatdar on 27.12.1976. On appeal, the Deputy Collector, by his order dated January 27, 1979, set aside the said order of the Mamlatdar. The appeal was allowed and the respondent was directed to be put back into possession of the land. A revision

before the Revenue Tribunal, at the instance of the appellant, against the said order of the Deputy Collector, was dismissed on 20.11.1979. The appellant filed the writ petition in the High Court of Gujarat, challenging the order of the Revenue Tribunal, which came to be dismissed on January 18, 1980. It is the validity of that order of the High Court that is assailed in this appeal by special leave.

2. Mr. Vimal Dave, learned Counsel appearing for the appellant, submits that once the order declaring the deemed purchase u/s 32G of the Bombay Tenancy Act, was held to be ineffective, all the rights of late Hathibhai were extinguished so his son (Chhaganbhai) rightly handed over possession of the land to the landlord. It is argued that the Deputy Collector erred in law in directing restoration of possession to the respondent; so also the Revenue Tribunal and the High Court fell into error in confirming the order of the Deputy Collector.

3. From a perusal of the provisions of Section 32G of the Bombay Tenancy Act, it is clear that on the sale having been declared ineffective, the rights which the late Hathibhai had as a tenant were not extinguished. Therefore, he would be deemed to have been in occupation of the land as a tenant on the date of his death on 24.9.1962. The tenancy rights being hereditary in view of Section 40 of the Bombay Tenancy Act, all his sons, became entitled to cultivate the land as tenants. Therefore, even if one of the sons, Chhaganbhai, had handed over possession of the land to the landlord, it would not affect the rights of the other son. Further, it is found that the landlord had obtained possession of the land otherwise than under the provisions of Section 29 of the Bombay Tenancy Act. In these circumstances, the Deputy Collector was justified in allowing the petition of the respondent and ordering the appellant to restore the possession of the land to the respondent. The Revenue Tribunal rightly confirmed the order of the Deputy Collector by dismissing the revision petition. We find no illegality in the impugned order of the High Court in dismissing the writ petition.

4. The appeal fails and it is accordingly dismissed. There shall be no order as to costs.